



February 11, 2005

SENATE BILL No. 423

DIGEST OF SB 423 (Updated February 10, 2005 12:39 pm - DI 102)

Citations Affected: IC 5-10; IC 5-10.3; IC 5-14; IC 10-12; noncode.

Synopsis: Forfeiture of public pensions for misconduct. Provides in certain circumstances for the forfeiture of all or a portion of a pension benefit from the state excise police and conservation enforcement officers' retirement fund, the public employees' retirement fund (excluding employees of the judicial and legislative departments of state government), and the state police benefit system. Permits a pension fund administrator (administrator) to begin an investigation concerning a possible forfeiture whenever: (1) criminal charges are filed; or (2) the inspector general files a report with the attorney general or a prosecuting attorney. If the administrator decides by a majority vote to conduct further proceedings, requires the administrator to wait until the criminal case is completed before holding a public hearing to determine whether forfeiture is appropriate. Establishes due process requirements for a forfeiture hearing. Requires a majority vote by the administrator, based on clear and convincing evidence, to forfeit a pension benefit. Requires the administrator to issue a written determination, including findings of fact. Allows a fund member to request that the administrator reconsider the administrator's forfeiture determination. Provides for the return of a fund member's contributions with interest when the pension benefit is forfeited. Provides that the administrator's evidence concerning forfeiture is confidential until the earlier of: (1) the time the fund member is notified of the forfeiture hearing; or (2) the time the fund member elects to have the records made public. Provides that the administrator's final determination is available for inspection and copying.

Effective: July 1, 2005.

Clark

January 13, 2005, read first time and referred to Committee on Pensions and Labor.
February 10, 2005, amended, reported favorably — Do Pass.

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February 11, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE BILL No. 423

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-5.5-22 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2005]: Sec. 22. (a) As used in this section, "PERF board" refers
4 to the board of trustees of the public employees' retirement fund.

5 (b) Notwithstanding any other provision of Indiana law, a
6 participant in the state excise police and conservation enforcement
7 officers' retirement fund is required to render honorable service as
8 a condition for receiving an annual retirement allowance under
9 this chapter.

10 (c) If a participant:

11 (1) is charged with a criminal offense that is:

12 (A) a felony related to the participant's service as a public
13 officer or public employee; or

14 (B) a misdemeanor involving an act that has resulted in a
15 financial loss to the state or in an unlawful benefit to an
16 individual in the conduct of state business; or

17 (2) is the subject of an inspector general's report certified to:

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1 (A) the attorney general under IC 4-2-7-6; or
 2 (B) a prosecuting attorney under IC 4-2-7-7;
 3 the PERF board shall take the actions described in subsection (d).

4 (d) Whenever the PERF board receives the charges or a
 5 certified report under subsection (c), the PERF board may begin
 6 an investigation. If, after conducting an investigation, the PERF
 7 board decides, by a majority vote, to conduct further proceedings
 8 to determine whether:

- 9 (1) the participant's conduct constitutes a breach of the
 10 condition that the participant's service be honorable; and
 11 (2) forfeiture of all or part of the participant's annual
 12 retirement allowance is appropriate;

13 the PERF board shall schedule a public hearing on the matter not
 14 later than sixty (60) days after the criminal prosecution is
 15 completed. The PERF board shall notify the participant not later
 16 than five (5) days after the public hearing is scheduled.

17 (e) If a public hearing is scheduled under subsection (d), the
 18 participant may examine and make copies of all evidence in the
 19 PERF board's possession relating to the possible forfeiture of all or
 20 a portion of the participant's annual retirement allowance.

21 (f) At a public hearing under subsection (d), the participant is
 22 entitled to appropriate due process protection consistent with
 23 IC 4-21.5, including the following:

- 24 (1) The right to be represented, at the participant's expense,
 25 by counsel.
 26 (2) The right to call and examine witnesses.
 27 (3) The right to introduce exhibits.
 28 (4) The right to cross-examine opposing witnesses.

29 (g) The PERF board shall consider and balance the following
 30 factors against the goals of the public pension laws in making a
 31 determination under subsection (d):

- 32 (1) The participant's length of service.
 33 (2) The reason for the participant's retirement.
 34 (3) The extent to which the participant's benefit has vested.
 35 (4) The participant's duties.
 36 (5) The participant's history of public service, including the
 37 public service covered by the state excise police and
 38 conservation enforcement officers' retirement fund and other
 39 public employment or service completed by the participant.
 40 (6) The nature of the misconduct, including the following:
 41 (A) The seriousness of the misconduct.
 42 (B) Whether the misconduct was a single offense or

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multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(7) The relationship between the misconduct and the participant's public service.

(8) The degree of the participant's moral turpitude, guilt, or culpability, including the participant's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the participant that bear on the justness of forfeiture.

(h) After the public hearing under subsection (d), the PERF board shall state its findings of fact. If the PERF board, based on clear and convincing evidence, finds by a majority vote that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate, the PERF board shall issue a written determination that includes the PERF board's findings of fact not later than thirty (30) days after the public hearing under subsection (d) and provide a copy to the participant.

(i) If the PERF board determines under subsection (d) that the forfeiture of all or part of the participant's annual retirement allowance is appropriate, the PERF board shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse, parent, or dependent child of the participant would otherwise be entitled under this chapter is appropriate.

(j) If the PERF board determines under subsection (d) that a partial forfeiture of the participant's annual retirement allowance is warranted, the PERF board shall calculate the participant's annual retirement allowance as if the participant had retired or withdrawn from the state excise police and conservation enforcement officers' retirement fund on the date that the participant's misconduct first occurred.

(k) If the calculation of the participant's annual retirement allowance under subsection (j) would result in an excessive annual retirement allowance or an excessive forfeiture, given the nature and extent of the participant's misconduct, the PERF board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the participant's misconduct; and
- (2) the participant's honorable service.

(l) A participant for whom the PERF board has determined

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under this section that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate may request that the PERF board reconsider its determination by filing a written request with the PERF board not later than fifteen (15) days after the date the PERF board issues its determination. The written request must state concisely the reasons that the participant believes that the forfeiture is erroneous. After the PERF board receives the written request, the PERF board shall set the matter for a hearing. At the hearing, the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the participant's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The PERF board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The PERF board shall issue its ruling in writing and may:

- (1) affirm its determination that the forfeiture is appropriate;
- (2) modify its determination by reducing or increasing the amount of the forfeiture; or
- (3) vacate its determination that forfeiture is appropriate.

(m) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows, or has reason to believe, is a participant in the state excise police and conservation enforcement officers' retirement fund, the prosecuting attorney shall:

- (1) notify the PERF board in writing of the prosecution or conviction; and
- (2) provide any information requested by the PERF board to enable the PERF board to make the determination required by this section.

(n) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is a participant in the state excise police and conservation enforcement officers' retirement fund, the inspector general shall:

- (1) deliver a copy of the report to the PERF board; and
- (2) provide any information requested by the PERF board to enable the PERF board to make the determination required by this section.

(o) A participant for whom forfeiture of all of the participant's annual retirement allowance is determined appropriate is entitled

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to the return of the participant's contributions to the fund with interest.

(p) The PERF board's evidence relating to an investigation under subsection (d) is confidential until the earlier of:

(1) the time the participant is notified of the PERF board's public hearing under subsection (d); or

(2) the time the participant elects to have the records made public.

(q) The PERF board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 2. IC 5-10.3-8-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section does not apply to a member of the fund who is an employee of the following:

(1) The judicial department of state government.

(2) The legislative department of state government.

(b) This section does not apply to a member's annuity savings account (as described in IC 5-10.2-2-3).

(c) Notwithstanding any other provision of Indiana law, a member of the fund is required to render honorable service as a condition for receiving a retirement benefit under this article.

(d) If a member:

(1) is charged with a criminal offense that is:

(A) a felony related to the member's service as a public officer or public employee; or

(B) a misdemeanor involving an act that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business; or

(2) is the subject of an inspector general's report certified to:

(A) the attorney general under IC 4-2-7-6; or

(B) a prosecuting attorney under IC 4-2-7-7;

the board shall take the actions described in subsection (e).

(e) Whenever the board receives the charges or a certified report under subsection (d), the board may begin an investigation. If, after conducting an investigation, the board decides, by a majority vote, to conduct further proceedings to determine whether:

(1) the member's conduct constitutes a breach of the condition that the member's service be honorable; and

(2) forfeiture of all or a portion of the member's retirement benefit is appropriate;

the board shall schedule a public hearing on the matter not later

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than sixty (60) days after the criminal prosecution is completed. The board shall notify the member not later than five (5) days after the public hearing is scheduled.

(f) If a public hearing is scheduled under subsection (e), the member may examine and make copies of all evidence in the board's possession relating to the possible forfeiture of all or a portion of the member's retirement benefit.

(g) At the public hearing under subsection (e), the member is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the member's expense, by counsel.

(2) The right to call and examine witnesses.

(3) The right to introduce exhibits.

(4) The right to cross-examine opposing witnesses.

(h) The board shall consider and balance the following factors against the goals of the public pension laws in making a determination under subsection (e):

(1) The member's length of service.

(2) The reason for the member's retirement.

(3) The extent to which the member's benefit has vested.

(4) The member's duties.

(5) The member's history of public service, including the public service covered by the fund and other public employment or service completed by the member.

(6) The nature of the misconduct, including the following:

(A) The seriousness of the misconduct.

(B) Whether the misconduct was a single offense or multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(7) The relationship between the misconduct and the member's public service.

(8) The degree of the member's moral turpitude, guilt, or culpability, including the member's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the member that bear on the justness of forfeiture.

(i) After the public hearing under subsection (e), the board shall state its findings of fact. If the board, based on clear and

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convincing evidence, finds by a majority vote that forfeiture of all or a portion of the member's retirement benefit is appropriate, the board shall issue a written determination that includes the board's findings of fact not later than thirty (30) days after the hearing under subsection (e) and provide a copy to the member.

(j) If the board determines under subsection (e) that the forfeiture of all or a portion of the member's retirement benefit is appropriate, the board shall also determine whether forfeiture of all or a portion of the benefits to which a surviving spouse, dependent, or beneficiary of the member would otherwise be entitled under this article is appropriate.

(k) If the board determines under subsection (e) that a partial forfeiture of the member's retirement benefit is warranted, the board shall calculate the member's retirement benefit as if the member had retired or withdrawn from the fund on the date that the member's misconduct first occurred.

(l) If the calculation of the member's retirement benefit under subsection (k) would result in an excessive retirement benefit or an excessive forfeiture, given the nature and extent of the member's misconduct, the board may select a date that is reasonably calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the member's misconduct; and
- (2) the member's honorable service.

(m) A member for whom the board has determined that forfeiture of all or a portion of the member's retirement benefit is appropriate may request that the board reconsider its determination by filing a written request with the board not later than fifteen (15) days after the date the board issues its determination. The written request must state concisely the reasons that the member believes that the forfeiture is erroneous. After the board receives the written request, the board shall set the matter for a hearing. At the hearing, the member is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the member's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The board shall issue its ruling in writing and may:

- (1) affirm its determination that the forfeiture is appropriate;
- (2) modify its determination by reducing or increasing the

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amount of the forfeiture; or

(3) vacate its determination that forfeiture is appropriate.

(n) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows, or has reason to believe, is a member of the fund, the prosecuting attorney shall:

(1) notify the board in writing of the prosecution or conviction; and

(2) provide any information requested by the board to enable the board to make the determination required by this section.

(o) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is a member of the public employees' retirement fund not excluded from this section by subsection (a), the inspector general shall:

(1) deliver a copy of the report to the board; and

(2) provide any information requested by the board to enable the board to make the determination required by this section.

(p) The board's evidence relating to an investigation under subsection (e) is confidential until the earlier of:

(1) the time the member is notified of the board's hearing under subsection (e); or

(2) the time the member elects to have the records made public.

(q) The board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.173-2003, SECTION 5, AND AS AMENDED BY P.L.200-2003, SECTION 3, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request,

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from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) Records containing information about whether:

(A) the misconduct of a public pension fund member or participant constitutes a breach of the condition that the fund member's or participant's service be honorable; and

(B) forfeiture of all or a portion of the fund member's or participant's retirement benefit, allowance, or pension is appropriate;

until the fund member or participant is notified of a public hearing on the matter, or the fund member or participant elects to have the records made public. A final determination by the administrator of the public pension fund is available for inspection and copying.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

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(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the **Indiana** film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges

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1 against the employee; and
 2 (C) ~~information concerning the factual basis for a~~ disciplinary
 3 ~~actions~~ action in which final action has been taken and that
 4 resulted in the employee being ~~disciplined~~ suspended,
 5 demoted, or discharged.

6 However, all personnel file information shall be made available
 7 to the affected employee or the employee's representative. This
 8 subdivision does not apply to disclosure of personnel information
 9 generally on all employees or for groups of employees without the
 10 request being particularized by employee name.

11 (9) Minutes or records of hospital medical staff meetings.

12 (10) Administrative or technical information that would
 13 jeopardize a record keeping or security system.

14 (11) Computer programs, computer codes, computer filing
 15 systems, and other software that are owned by the public agency
 16 or entrusted to it and portions of electronic maps entrusted to a
 17 public agency by a utility.

18 (12) Records specifically prepared for discussion or developed
 19 during discussion in an executive session under IC 5-14-1.5-6.1.
 20 However, this subdivision does not apply to that information
 21 required to be available for inspection and copying under
 22 subdivision (8).

23 (13) The work product of the legislative services agency under
 24 personnel rules approved by the legislative council.

25 (14) The work product of individual members and the partisan
 26 staffs of the general assembly.

27 (15) The identity of a donor of a gift made to a public agency if:
 28 (A) the donor requires nondisclosure of the donor's identity as
 29 a condition of making the gift; or
 30 (B) after the gift is made, the donor or a member of the donor's
 31 family requests nondisclosure.

32 (16) Library or archival records:
 33 (A) which can be used to identify any library patron; or
 34 (B) deposited with or acquired by a library upon a condition
 35 that the records be disclosed only:
 36 (i) to qualified researchers;
 37 (ii) after the passing of a period of years that is specified in
 38 the documents under which the deposit or acquisition is
 39 made; or
 40 (iii) after the death of persons specified at the time of the
 41 acquisition or deposit.

42 However, nothing in this subdivision shall limit or affect contracts

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1 entered into by the Indiana state library pursuant to IC 4-1-6-8.
 2 (17) The identity of any person who contacts the bureau of motor
 3 vehicles concerning the ability of a driver to operate a motor
 4 vehicle safely and the medical records and evaluations made by
 5 the bureau of motor vehicles staff or members of the driver
 6 licensing *medical advisory board. ~~committee.~~* However, upon
 7 written request to the commissioner of the bureau of motor
 8 vehicles, the driver must be given copies of the driver's medical
 9 records and evaluations that concern the driver.
 10 (18) School safety and security measures, plans, and systems,
 11 including emergency preparedness plans developed under 511
 12 IAC 6.1-2-2.5.
 13 (19) A record or a part of a record, the public disclosure of which
 14 would have a reasonable likelihood of threatening public safety
 15 by exposing a vulnerability to terrorist attack. A record described
 16 under this subdivision includes:
 17 (A) a record assembled, prepared, or maintained to prevent,
 18 mitigate, or respond to an act of terrorism under IC 35-47-12-1
 19 or an act of agricultural terrorism under IC 35-47-12-2;
 20 (B) vulnerability assessments;
 21 (C) risk planning documents;
 22 (D) needs assessments;
 23 (E) threat assessments;
 24 (F) domestic preparedness strategies;
 25 (G) the location of community drinking water wells and
 26 surface water intakes;
 27 (H) the emergency contact information of emergency
 28 responders and volunteers;
 29 (I) infrastructure records that disclose the configuration of
 30 critical systems such as communication, electrical, ventilation,
 31 water, and wastewater systems; and
 32 (J) detailed drawings or specifications of structural elements,
 33 floor plans, and operating, utility, or security systems, whether
 34 in paper or electronic form, of any building or facility located
 35 on an airport (as defined in IC 8-21-1-1) that is owned,
 36 occupied, leased, or maintained by a public agency. A record
 37 described in this clause may not be released for public
 38 inspection *by any public agency* without the prior approval of
 39 the public agency *that owns, occupies, leases, or maintains the*
 40 *airport.* The ~~submitting~~ public agency *that owns, occupies,*
 41 *leases, or maintains the airport:*
 42 (i) is responsible for determining whether the public

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disclosure of a record or a part of a record has a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and
(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under ~~IC 5-14-3-4(19)(f)~~ IC 5-14-3-4 without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 4. IC 10-12-2-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10.5 (a) Notwithstanding any other provision of Indiana law, an employee beneficiary is required to render honorable service as a condition for receiving a monthly pension amount under this article.**

(b) If an employee beneficiary:

(1) is charged with a criminal offense that is:

(A) a felony related to the employee beneficiary's service

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1 as a public officer or public employee; or
 2 (B) a misdemeanor involving an act that has resulted in a
 3 financial loss to the state or in an unlawful benefit to an
 4 individual in the conduct of state business; or
 5 (2) is the subject of an inspector general's report certified to:
 6 (A) the attorney general under IC 4-2-7-6; or
 7 (B) a prosecuting attorney under IC 4-2-7-7;
 8 the department shall take the actions described in subsection (c).
 9 (c) When the department receives the charges or a certified
 10 report under subsection (b), the department may begin an
 11 investigation. If, after conducting an investigation, the department
 12 decides to conduct further proceedings to determine whether:
 13 (1) the employee beneficiary's conduct constitutes a breach of
 14 the condition that the employee beneficiary's service be
 15 honorable; and
 16 (2) forfeiture of all or part of the employee beneficiary's
 17 monthly pension amount is appropriate;
 18 the department shall schedule a public hearing on the matter not
 19 later than sixty (60) days after the criminal prosecution is
 20 completed. The department shall notify the employee beneficiary
 21 not later than five (5) days after the public hearing is scheduled.
 22 (d) If a public hearing is scheduled under subsection (c), the
 23 employee beneficiary may examine and make copies of all evidence
 24 in the department's possession relating to the possible forfeiture of
 25 all or a portion of the employee beneficiary's monthly pension
 26 amount.
 27 (e) At the public hearing under subsection (c), the employee
 28 beneficiary is entitled to appropriate due process protection
 29 consistent with IC 4-21.5, including the following:
 30 (1) The right to be represented, at the employee beneficiary's
 31 expense, by counsel.
 32 (2) The right to call and examine witnesses.
 33 (3) The right to introduce exhibits.
 34 (4) The right to cross-examine opposing witnesses.
 35 (f) The department shall consider and balance the following
 36 factors against the goals of the public pension laws in making a
 37 determination under subsection (c):
 38 (1) The employee beneficiary's length of service.
 39 (2) The reason for the employee beneficiary's retirement.
 40 (3) The extent to which the employee beneficiary's benefit has
 41 vested.
 42 (4) The employee beneficiary's duties.

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(5) The employee beneficiary's history of public service, including the public service covered by the pension trust and other public employment or service completed by the employee beneficiary.

(6) The nature of the misconduct, including the following:

(A) The seriousness of the misconduct.

(B) Whether the misconduct was a single offense or multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(7) The relationship between the misconduct and the employee beneficiary's public service.

(8) The degree of the employee beneficiary's moral turpitude, guilt, or culpability, including the employee beneficiary's motives for and personal gain from the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.

(10) Other personal circumstances of the employee beneficiary that bear on the justness of forfeiture.

(g) After the hearing, the department shall state its findings of fact. If the department, based on clear and convincing evidence, finds that forfeiture of all or a portion of the employee beneficiary's monthly pension amount is appropriate, the department shall issue a written determination that includes the department's findings of fact not later than thirty (30) days after the public hearing under subsection (c) and provide a copy to the employee beneficiary.

(h) If the department determines under subsection (c) that the forfeiture of all or part of the employee beneficiary's monthly pension amount is appropriate, the department shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse or dependent child of the employee beneficiary would otherwise be entitled under this article is appropriate.

(i) If the department determines under subsection (c) that a partial forfeiture of the employee beneficiary's monthly pension amount is warranted, the department shall direct the trustee to recalculate the employee beneficiary's monthly pension amount as if the employee beneficiary had retired or resigned from the department on the date that the employee beneficiary's misconduct first occurred.

(j) If the calculation of the employee beneficiary's monthly pension amount under subsection (i) would result in an excessive

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1 retirement benefit or an excessive forfeiture, given the nature and
 2 extent of the employee beneficiary's misconduct, the department
 3 may select a date that is reasonably calculated to impose a
 4 forfeiture that reflects both the nature and extent of:

- 5 (1) the employee beneficiary's misconduct; and
- 6 (2) the employee beneficiary's honorable service.

7 (k) An employee beneficiary for whom the department has
 8 determined that forfeiture of all or a portion of the employee
 9 beneficiary's monthly pension amount is appropriate may request
 10 that the department reconsider its determination by filing a written
 11 request with the department not later than fifteen (15) days after
 12 the date the department issues its determination. The written
 13 request must state concisely the reasons that the employee
 14 beneficiary believes that the forfeiture is erroneous. After the
 15 department receives the written request, the department shall set
 16 the matter for a hearing. At the hearing, the employee beneficiary
 17 is entitled to appropriate due process protection consistent with
 18 IC 4-21.5, including the right to be represented, at the employee
 19 beneficiary's expense, by counsel, the right to call and examine
 20 witnesses, the right to introduce exhibits, and the right to
 21 cross-examine opposing witnesses. The department shall rule on
 22 the request for reconsideration not later than thirty (30) days after
 23 the date of the hearing. The department may:

- 24 (1) affirm its determination that the forfeiture is appropriate;
- 25 (2) modify its determination by reducing or increasing the
- 26 amount of the forfeiture; or
- 27 (3) vacate its determination that forfeiture is appropriate.

28 (l) If a prosecuting attorney undertakes the prosecution of or
 29 obtains a criminal conviction against an individual whom the
 30 prosecuting attorney knows or has reason to believe is an employee
 31 beneficiary of the pension trust, the prosecuting attorney shall:

- 32 (1) notify the department in writing of the prosecution or
- 33 conviction; and
- 34 (2) provide any information requested by the department to
- 35 enable the department to make the determination required by
- 36 this section.

37 (m) If the inspector general certifies a report to the attorney
 38 general under IC 4-2-7-6 or to a prosecuting attorney under
 39 IC 4-2-7-7, concerning an individual whom the inspector general
 40 knows, or has reason to believe, is an employee beneficiary of the
 41 pension trust, the inspector general shall:

- 42 (1) deliver a copy of the report to the department; and

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1 (2) provide any information requested by the department to
 2 enable the department to make the determination required by
 3 this section.

4 (n) An employee beneficiary for whom forfeiture of all of the
 5 employee beneficiary's monthly pension benefit is determined
 6 appropriate is entitled to the return of the employee beneficiary's
 7 contributions to the trust fund with interest.

8 (o) The department's evidence relating to an investigation under
 9 subsection (c) is confidential until the earlier of:

10 (1) the time the employee beneficiary is notified of the
 11 department's public hearing under subsection (c); or

12 (2) the time the employee beneficiary elects to have the
 13 records made public.

14 (p) The department's final determination under this section is
 15 available for inspection and copying under IC 5-14-3.

16 SECTION 5. [EFFECTIVE JULY 1, 2005] IC 5-10-5.5-22,
 17 IC 5-10.3-8-14, and IC 10-12-2-10.5, all as added by this act, and
 18 IC 5-14-3-4, as amended by this act, apply to misconduct that
 19 occurs after June 30, 2005.

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COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 423, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 10, delete "participant commits misconduct while in active service" and insert "**participant:**

(1) is charged with a criminal offense that is:

(A) a felony related to the participant's service as a public officer or public employee; or

(B) a misdemeanor involving an act that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business; or

(2) is the subject of an inspector general's report certified to:

(A) the attorney general under IC 4-2-7-6; or

(B) a prosecuting attorney under IC 4-2-7-7;".

Page 1, line 11, delete "on the force,".

Page 1, line 11, begin a new line blocked left beginning with "the PERF board".

Page 1, line 11, delete "conduct a hearing" and insert "**take the actions described in subsection (d).**

(d) Whenever the PERF board receives the charges or a certified report under subsection (c), the PERF board may begin an investigation. If, after conducting an investigation, the PERF board decides, by a majority vote, to conduct further proceedings".

Page 1, line 13, delete "misconduct" and insert "**participant's conduct**".

Page 1, line 16, delete "appropriate." and insert "**appropriate; the PERF board shall schedule a public hearing on the matter not later than sixty (60) days after the criminal prosecution is completed. The PERF board shall notify the participant not later than five (5) days after the public hearing is scheduled.**

(e) If a public hearing is scheduled under subsection (d), the participant may examine and make copies of all evidence in the PERF board's possession relating to the possible forfeiture of all or a portion of the participant's annual retirement allowance.

(f) At a public hearing under subsection (d), the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the participant's expense, by counsel.

(2) The right to call and examine witnesses.



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(3) The right to introduce exhibits.

(4) The right to cross-examine opposing witnesses."

Page 1, line 17, delete "(d)" and insert "(g)".

Page 2, line 2, delete "(c):" and insert "(d):".

Page 2, line 26, delete "(e) The" and insert **"(h) After the public hearing under subsection (d), the PERF board shall state its findings of fact. If the PERF board, based on clear and convincing evidence, finds by a majority vote that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate, the"**.

Page 2, line 26, after "a" insert **"written"**.

Page 2, line 26, after "determination" insert **"that includes the PERF board's findings of fact"**.

Page 2, line 27, after "the" insert **"public"**.

Page 2, line 27, delete "(c)" and insert "(d)".

Page 2, line 29, delete "(f)" and insert "(i)".

Page 2, line 29, delete "(c)" and insert "(d)".

Page 2, line 35, delete "(g)" and insert "(j)".

Page 2, line 35, delete "(c)" and insert "(d)".

Page 2, line 42, delete "(h)" and insert "(k)".

Page 3, line 1, delete "(g)" and insert "(j)".

Page 3, between lines 7 and 8, begin a new paragraph and insert:

"(l) A participant for whom the PERF board has determined under this section that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate may request that the PERF board reconsider its determination by filing a written request with the PERF board not later than fifteen (15) days after the date the PERF board issues its determination. The written request must state concisely the reasons that the participant believes that the forfeiture is erroneous. After the PERF board receives the written request, the PERF board shall set the matter for a hearing. At the hearing, the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the participant's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The PERF board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The PERF board shall issue its ruling in writing and may:

(1) affirm its determination that the forfeiture is appropriate;

(2) modify its determination by reducing or increasing the amount of the forfeiture; or

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(3) vacate its determination that forfeiture is appropriate."

Page 3, line 8, delete "(i)" and insert "(m)".

Page 3, delete lines 18 through 25, begin a new paragraph and insert:

"(n) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is a participant in the state excise police and conservation enforcement officers' retirement fund, the inspector general shall:

- (1) deliver a copy of the report to the PERF board; and**
- (2) provide any information requested by the PERF board to enable the PERF board to make the determination required by this section.**

(o) A participant for whom forfeiture of all of the participant's annual retirement allowance is determined appropriate is entitled to the return of the participant's contributions to the fund with interest. "

Page 3, delete lines 26 through 39, begin a new paragraph and insert:

"(p) The PERF board's evidence relating to an investigation under subsection (d) is confidential until the earlier of:

- (1) the time the participant is notified of the PERF board's public hearing under subsection (d); or**
- (2) the time the participant elects to have the records made public."**

Page 3, line 40, delete "IC 5-14-3-4(b)(21).", begin a new paragraph and insert:

"(q)".

Page 3, delete line 42.

Delete pages 4 through 5.

Page 6, delete lines 1 through 8, begin a new paragraph and insert:

"SECTION 2. IC 5-10.3-8-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section does not apply to a member of the fund who is an employee of the following:

- (1) The judicial department of state government.**
- (2) The legislative department of state government.**

(b) This section does not apply to a member's annuity savings account (as described in IC 5-10.2-2-3).

(c) Notwithstanding any other provision of Indiana law, a member of the fund is required to render honorable service as a

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condition for receiving a retirement benefit under this article.

(d) If a member:

(1) is charged with a criminal offense that is:

(A) a felony related to the member's service as a public officer or public employee; or

(B) a misdemeanor involving an act that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business; or

(2) is the subject of an inspector general's report certified to:

(A) the attorney general under IC 4-2-7-6; or

(B) a prosecuting attorney under IC 4-2-7-7;

the board shall take the actions described in subsection (e).

(e) Whenever the board receives the charges or a certified report under subsection (d), the board may begin an investigation. If, after conducting an investigation, the board decides, by a majority vote, to conduct further proceedings to determine whether:

(1) the member's conduct constitutes a breach of the condition that the member's service be honorable; and

(2) forfeiture of all or a portion of the member's retirement benefit is appropriate;

the board shall schedule a public hearing on the matter not later than sixty (60) days after the criminal prosecution is completed. The board shall notify the member not later than five (5) days after the public hearing is scheduled.

(f) If a public hearing is scheduled under subsection (e), the member may examine and make copies of all evidence in the board's possession relating to the possible forfeiture of all or a portion of the member's retirement benefit.

(g) At the public hearing under subsection (e), the member is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the member's expense, by counsel.

(2) The right to call and examine witnesses.

(3) The right to introduce exhibits.

(4) The right to cross-examine opposing witnesses.

(h) The board shall consider and balance the following factors against the goals of the public pension laws in making a determination under subsection (e):

(1) The member's length of service.

(2) The reason for the member's retirement.

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- (3) The extent to which the member's benefit has vested.
 - (4) The member's duties.
 - (5) The member's history of public service, including the public service covered by the fund and other public employment or service completed by the member.
 - (6) The nature of the misconduct, including the following:
 - (A) The seriousness of the misconduct.
 - (B) Whether the misconduct was a single offense or multiple offenses.
 - (C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.
 - (7) The relationship between the misconduct and the member's public service.
 - (8) The degree of the member's moral turpitude, guilt, or culpability, including the member's motives for and personal gain from the misconduct.
 - (9) The availability and adequacy of other punishment or sanctions for the misconduct, including criminal prosecution.
 - (10) Other personal circumstances of the member that bear on the justness of forfeiture.
- (i) After the public hearing under subsection (e), the board shall state its findings of fact. If the board, based on clear and convincing evidence, finds by a majority vote that forfeiture of all or a portion of the member's retirement benefit is appropriate, the board shall issue a written determination that includes the board's findings of fact not later than thirty (30) days after the hearing under subsection (e) and provide a copy to the member.
- (j) If the board determines under subsection (e) that the forfeiture of all or a portion of the member's retirement benefit is appropriate, the board shall also determine whether forfeiture of all or a portion of the benefits to which a surviving spouse, dependent, or beneficiary of the member would otherwise be entitled under this article is appropriate.
- (k) If the board determines under subsection (e) that a partial forfeiture of the member's retirement benefit is warranted, the board shall calculate the member's retirement benefit as if the member had retired or withdrawn from the fund on the date that the member's misconduct first occurred.
- (l) If the calculation of the member's retirement benefit under subsection (k) would result in an excessive retirement benefit or an excessive forfeiture, given the nature and extent of the member's misconduct, the board may select a date that is reasonably

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calculated to impose a forfeiture that reflects both the nature and extent of:

- (1) the member's misconduct; and
- (2) the member's honorable service.

(m) A member for whom the board has determined that forfeiture of all or a portion of the member's retirement benefit is appropriate may request that the board reconsider its determination by filing a written request with the board not later than fifteen (15) days after the date the board issues its determination. The written request must state concisely the reasons that the member believes that the forfeiture is erroneous. After the board receives the written request, the board shall set the matter for a hearing. At the hearing, the member is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the member's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The board shall issue its ruling in writing and may:

- (1) affirm its determination that the forfeiture is appropriate;
- (2) modify its determination by reducing or increasing the amount of the forfeiture; or
- (3) vacate its determination that forfeiture is appropriate.

(n) If a prosecuting attorney undertakes the prosecution of or obtains a criminal conviction against an individual whom the prosecuting attorney knows, or has reason to believe, is a member of the fund, the prosecuting attorney shall:

- (1) notify the board in writing of the prosecution or conviction; and
- (2) provide any information requested by the board to enable the board to make the determination required by this section.

(o) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is a member of the public employees' retirement fund not excluded from this section by subsection (a), the inspector general shall:

- (1) deliver a copy of the report to the board; and
 - (2) provide any information requested by the board to enable the board to make the determination required by this section.
- (p) The board's evidence relating to an investigation under

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subsection (e) is confidential until the earlier of:

- (1) the time the member is notified of the board's hearing under subsection (e); or
- (2) the time the member elects to have the records made public.

(q) The board's final determination under this section is available for inspection and copying under IC 5-14-3."

Page 6, after line 42, begin a new line block indented and insert:

"(12) Records containing information about whether:

- (A) the misconduct of a public pension fund member or participant constitutes a breach of the condition that the fund member's or participant's service be honorable; and
- (B) forfeiture of all or a portion of the fund member's or participant's retirement benefit, allowance, or pension is appropriate;

until the fund member or participant is notified of a public hearing on the matter, or the fund member or participant elects to have the records made public. A final determination by the administrator of the public pension fund is available for inspection and copying."

Page 8, line 13, strike "information concerning".

Page 8, line 13, reset in italic "the factual basis for".

Page 8, line 14, strike "actions".

Page 8, line 14, reset in italic "action".

Page 8, line 15, strike "disciplined".

Page 8, line 15, reset in italic "suspended,".

Page 8, line 16, reset in italic "demoted,".

Page 10, delete lines 33 through 41.

Page 11, line 18, delete "beneficiary commits misconduct while in the" and insert "beneficiary:

(1) is charged with a criminal offense that is:

- (A) a felony related to the employee beneficiary's service as a public officer or public employee; or
- (B) a misdemeanor involving an act that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business; or

(2) is the subject of an inspector general's report certified to:

- (A) the attorney general under IC 4-2-7-6; or
- (B) a prosecuting attorney under IC 4-2-7-7;"

Page 11, line 19, delete "active service of the department,".

Page 11, line 19, begin a new line blocked left beginning with "the department shall".

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Page 11, line 19, delete "conduct a".

Page 11, line 20, delete "hearing" and insert **"take the actions described in subsection (c)."**

(c) When the department receives the charges or a certified report under subsection (b), the department may begin an investigation. If, after conducting an investigation, the department decides to conduct further proceedings".

Page 11, line 21, delete "misconduct" and insert **"employee beneficiary's conduct"**.

Page 11, line 24, delete "appropriate." and insert **"appropriate; the department shall schedule a public hearing on the matter not later than sixty (60) days after the criminal prosecution is completed. The department shall notify the employee beneficiary not later than five (5) days after the public hearing is scheduled."**

(d) If a public hearing is scheduled under subsection (c), the employee beneficiary may examine and make copies of all evidence in the department's possession relating to the possible forfeiture of all or a portion of the employee beneficiary's monthly pension amount.

(e) At the public hearing under subsection (c), the employee beneficiary is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

- (1) The right to be represented, at the employee beneficiary's expense, by counsel.**
- (2) The right to call and examine witnesses.**
- (3) The right to introduce exhibits.**
- (4) The right to cross-examine opposing witnesses."**

Page 11, line 25, delete "(c)" and insert **"(f)"**.

Page 11, line 27, delete "(b):" and insert **"(c):"**.

Page 12, line 10, delete "(d) The" and insert **"(g) After the hearing, the department shall state its findings of fact. If the department, based on clear and convincing evidence, finds that forfeiture of all or a portion of the employee beneficiary's monthly pension amount is appropriate, the"**.

Page 12, line 10, after "a" insert **"written"**.

Page 12, line 10, after "determination" insert **"that includes the department's findings of fact"**.

Page 12, line 11, after "the" insert **"public"**.

Page 12, line 11, delete "(b)" and insert **"(c)"**.

Page 12, line 13, delete "(e)" and insert **"(h)"**.

Page 12, line 13, delete "(b)" and insert **"(c)"**.

Page 12, line 19, delete "(f)" and insert **"(i)"**.

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Page 12, line 19, delete "(b)" and insert "(c)".

Page 12, line 26, delete "(g)" and insert "(j)".

Page 12, line 27, delete "(f)" and insert "(i)".

Page 12, between lines 33 and 34, begin a new paragraph and insert:

"(k) An employee beneficiary for whom the department has determined that forfeiture of all or a portion of the employee beneficiary's monthly pension amount is appropriate may request that the department reconsider its determination by filing a written request with the department not later than fifteen (15) days after the date the department issues its determination. The written request must state concisely the reasons that the employee beneficiary believes that the forfeiture is erroneous. After the department receives the written request, the department shall set the matter for a hearing. At the hearing, the employee beneficiary is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the employee beneficiary's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The department shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The department may:

- (1) affirm its determination that the forfeiture is appropriate;**
- (2) modify its determination by reducing or increasing the amount of the forfeiture; or**
- (3) vacate its determination that forfeiture is appropriate."**

Page 12, line 34, delete "(h)" and insert "(l)".

Page 12, after line 42, begin a new paragraph and insert:

"(m) If the inspector general certifies a report to the attorney general under IC 4-2-7-6 or to a prosecuting attorney under IC 4-2-7-7, concerning an individual whom the inspector general knows, or has reason to believe, is an employee beneficiary of the pension trust, the inspector general shall:

- (1) deliver a copy of the report to the department; and**
- (2) provide any information requested by the department to enable the department to make the determination required by this section.**

(n) An employee beneficiary for whom forfeiture of all of the employee beneficiary's monthly pension benefit is determined appropriate is entitled to the return of the employee beneficiary's contributions to the trust fund with interest."

Page 13, delete lines 1 through 16, begin a new paragraph and insert:

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"(o) The department's evidence relating to an investigation under subsection (c) is confidential until the earlier of:

- (1) the time the employee beneficiary is notified of the department's public hearing under subsection (c); or**
- (2) the time the employee beneficiary elects to have the records made public."**

Page 13, line 17, delete "IC 5-14-3-4(b)(21).", begin a new paragraph and insert:

"(p)".

Page 13, delete lines 19 through 42.

Delete pages 14 through 31.

Page 32, delete lines 1 through 11.

Page 32, line 13, delete "IC 5-10.2-4-11," and insert **"IC 5-10.3-8-14, and"**.

Page 32, line 13, delete "IC 33-38-6-28, IC 33-39-7-26,".

Page 32, delete line 14.

Page 32, line 15, delete "IC 36-8-10-12.3,".

Page 32, line 15, after "IC 5-14-3-4" insert ",".

Page 32, line 15, delete "and".

Page 32, line 16, delete "IC 36-8-8-12.7, both".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 423 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 7, Nays 4.

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